



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Minutes of the September 8, 2004 meeting of the
Commission on Governmental Ethics and Election Practices
held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Chair James O. Donnelly; Hon. Andrew Ketterer; Hon. Terrence J. MacTaggart;
Hon. Jean Ginn Marvin. Staff: Executive Director Jonathan Wayne; Counsel Phyllis
Gardiner.

At 9:00 a.m., Chair Donnelly convened the meeting. The Commission considered the
following items:

Agenda Item #1 - Ratification of minutes of July 21, 2004 meeting

Dr. MacTaggart moved, Mr. Ketterer seconded, and the members voted unanimously
(4-0) to adopt the draft minutes of the July 21, 2004 meeting.

Agenda Item #3 - Request for Investigation: Advertisement for Fundraiser for Rep. Earl
Richardson, Rep. James D. Annis, and Sen. Paul T. Davis, Sr.

Because one respondent involved in Agenda Item #2 had not yet arrived, Chair Donnelly
tabled Item #2 until later in the meeting.

Mr. Ketterer moved, Dr. MacTaggart seconded, and the members voted unanimously to
adopt the staff recommendation, which was that no violation had occurred and that no
further investigation was necessary.

Agenda Item #4 - Request for Investigation: Palmcards Paid for by Sen. Stephen S.
Stanley

The Chair of the Republican Party had filed a request for an investigation stating that
Senator Stanley had personally paid for and was distributing palmcards at parades with
phone numbers of state agencies and the dates of agricultural fairs. The complainant
stated that this amounted to a contribution by the candidate to his campaign which was
not permitted under the Maine Clean Election Act. The Commission Director indicated
that he spoke to Sen. Stanley by telephone and the Senator responded that he had
believed the palmcards were an acceptable communication from him to his constituents.

The Commission staff recommended that Sen. Stanley's campaign use its Maine Clean
Election Funds to reimburse the Senator for the palmcards, and that no finding of

violation be made. Mr. Ketterer moved, Dr. MacTaggart seconded, and the members voted unanimously (4-0) to adopt the staff recommendation.

Agenda Item #2 - Contributions by Lobbyists

Legislators are prohibited from accepting contributions from lobbyists during the Legislative Session, except after March 15 during an election year. The Commission Director explained that Representatives Thomas Saviello and Janet Mills accepted three contributions totaling \$100 from lobbyists during the 2003 sessions. He stated that there was some doubt whether the contributions technically violated the Legislative Ethics Law because the statute only prohibits the intentional acceptance of contributions from lobbyists.

Representatives Janet Mills explained that she didn't understand that the person who contributed \$25 to her campaign was a lobbyist. She said that she would be happy to return the contribution, and that she wanted to make clear that she wouldn't have accepted money from the contributor if she had known he was a lobbyist. Rep. Mills also pointed out that the Legislative Ethics Law and Maine Clean Election Act are unclear with regard to whether the prohibition covers seed money contributions.

Representative Thomas Saviello said that he had also accepted contributions from two lobbyists inadvertently, and noted that the checks were written in the names of the individuals and not their lobbying organizations. He also stated that if the checks were dated after March 15, there would not have been any question of a violation. Rep. Saviello also expressed that the two candidate guides published by the Commission do not mention that lobbyists cannot give seed money contributions, and that he should not have to return the contributions because of the gray area regarding the law of this matter.

Mr. Ketterer asked how the lobbyists came to make seed money contributions to the candidates. Rep. Saviello responded that both individuals had given him contributions in previous elections, and he went back to his original list of contributors. Rep. Mills responded that she had known the individual for 30 years, and had never seen him during the Legislative Session lobbying for anything. Rep. Mills also pointed out that there is no prohibition on lobbyist contributions for candidates who are not Legislators. She stated her belief that the candidate guides should tell every candidate -- regardless of whether they are running for their first campaign or for re-election -- the exact measures necessary in order to avoid accepting contributions from a lobbyist.

Dr. MacTaggart commented that the statute does emphasize intentionally accepting contributions and that it seems clear that neither Representative intentionally accepted contributions from lobbyists. He said that the staff recommendation that the campaigns return the contributions to the contributors made sense to him because of the appearance of the entire matter.

Chair Donnelly stated that historically the ban on lobbyist contributions existed before the Maine Clean Election Act came into effect, and that it was designed to prevent people from raising money while they were legislating. He then asked the Commission Director

whether the two materials given out to candidates were produced by the Commission. The Commission Director responded that one booklet was prepared by the Commission and the other by the Secretary of State's Office, and that he would make sure that both booklets would be amended to address the issue. Mr. Ketterer moved, Chair Donnelly seconded, and the members voted to unanimously to adopt the staff recommendation that the campaigns return the contributions and that the Representatives reimburse the campaigns for the contributions from their personal funds. The Commission made no finding of violation.

Agenda Item #5 - Request for Investigation: Donation of Materials for Campaign Signs of Charles Harlow

Mary Beth Williams filed a complaint against Charles Harlow stating that Mr. Harlow received an in-kind contribution of materials that he used to make signs for his legislative campaign, and that the contribution was in violation of the Maine Clean Election Act. The Commission Director explained that Mr. Harlow had called the Commission staff and asked if using the materials would be acceptable, and due to a miscommunication believed that this was okay.

Charles Harlow stated that when he ran as a candidate in previous campaigns for City office in Portland, he had received materials for signs from other municipal candidates. He called the Commission to find out if he could use these signs from his previous campaigns, and the Commission staff told him that all he needed to do was to report the expenses for paint and stencils.

The Commission Director recommended a finding of no violation because the candidate acted in good faith and it was questionable whether he used any materials for this election that had not been used in previous elections, which is permissible.

Mr. Ketterer moved, Dr. MacTaggart seconded, and the members voted unanimously (4-0) to adopt the staff recommendation.

Agenda Item #6 - Appeal of Denial of Request for Certification/Arthur W. Keenan

The Commission staff had denied Arthur Keenan's request for certification as a Maine Clean Election Act candidate because he collected six of his \$5 qualifying contributions before he signed the Declaration of Intent form. Mr. Keenan submitted a written appeal.

Mr. Keenan explained that he had collected 60 checks originally, but that some of the contributors weren't verified as registered voters in his district by the town clerk. He explained that he was new to the election process, that he is a hard-working individual who was worried about making the 30-day deadline for replacement candidates.

The Commission Director explained that the Commission staff had tried to make the eligibility requirements clear, and he read a sentence in a memo sent to all replacement candidates stating that checks collected before the Declaration of Intent was signed would not count toward the requirements. He then asked if Mr. Keenan had seen the memo. Mr. Keenan replied that he was an 11th hour replacement candidate, wasn't fully aware of

the Declaration of Intent requirement when he began collecting the checks, and no one advised him that he needed to wait on collecting the \$5 checks until after the Declaration of Intent was signed. The Commission Director asked if he had realized that the checks received before the deadline might not be counted. Mr. Keenan replied that he did realize this, but that he was running out of time to get the checks verified by the town clerk.

Mr. Ketterer asked Mr. Keenan if he understood the reasons why the Commission staff set aside the checks and wouldn't count them towards the requirement of 50 checks. Mr. Keenan replied that they were collected before he signed the Declaration of Intent.

Ms. Ginn Marvin asked if the procedures necessary for collecting checks were clear now. Mr. Keenan replied that in the beginning it wasn't but that now it was. Ms. Ginn Marvin asked if the people assisting with running for office helped him learn the rules. Mr. Keenan replied that those individuals suggested he run as a traditional candidate. He also stated that he had problems getting the \$5 checks to begin with, and that he had chosen to run as a MCEA candidate. Mr. Keenan remarked that he worked to the best of his ability with the information he had at the time.

The Commission Director stated that one argument for letting Mr. Keenan participate as a MCEA candidate was that replacement candidates have a compressed time period of 30 days to gather the checks, and that candidates cannot always get complete help from their caucuses. He noted, on the other hand, that every time the Commission grants an exception, it makes the rule that much harder to enforce. The Commission Director felt that Mr. Keenan had acted in good faith, and that while perhaps he should have better educated himself on the proper procedures, he had done the best that he could.

Toby McGrath spoke in favor of Mr. Keenan's certification. He pointed out some comments made by the Commission Chair at a previous meeting noting that flexibility in the qualifying for the MCEA is important and that confusion as to the forms and the first-time status of candidates were mitigating factors. Mr. McGrath noted that Representative Shawn Faircloth was in a similar situation and the Commission was understanding. Mr. McGrath asked that Mr. Keenan be accepted as a MCEA candidate.

Arn Pearson of the Maine Citizen Leadership Fund stated that his organization believed that there is a strong public policy in favor of having people participate in the MCEA, and that with term limits there were a lot of inexperienced candidates. He stated that if a mistake was made that isn't contrary to the spirit of the law or that could be remedied, his organization believed that the Commission should exercise leniency.

The Commission members began their deliberations, and Mr. Ketterer stated his concern with continuity and stability with regards to issues such as this one. Ms. Ginn Marvin stated that it was hard for the Commission to have rules and not follow them. She felt that the possibility for future problems with regards to this issue was high, and that therefore the letter of the law should be followed.

Dr. MacTaggart moved that Mr. Keenan's appeal be granted and Mr. Ketterer seconded the motion. Dr. MacTaggart and Mr. Keenan voted in favor of the motion, and Mr. Donnelly and Ms. Ginn Marvin voted against the motion. Because the vote was two to two, Mr. Keenan's appeal of the staff determination was denied.

Agenda Item #7 - Appeal of Denial of Request for Certification/Denis A. Morse

The Commission staff denied Denis Morse's request to be certified as a Maine Clean Election Act candidate, because Mr. Morse submitted his request for certification on August 26 rather than by the August 24 deadline. Mr. Morse submitted a written appeal.

Toby McGrath made a presentation to the Commission members as a representative of Mr. Morse. He explained that Mr. Morse thought he had a full month to gather contributions beginning on July 26, as opposed to the actual qualifying period of 30 days that ended on August 24. Mr. McGrath also stated that Mr. Morse acted in good faith, and that the MCEA should allow for a case-by-case consideration on the issue of lateness, as opposed to having a black-and-white outlook towards the rules.

The Commission Director explained the Commission Rules set forth a 30-day qualifying period for replacement candidates that began on July 26 and ended on August 24. He stated that the Commission staff does its best to tell candidates what the deadlines are, and that the August 24 deadline was printed in bold print in a memo addressed to the replacement candidates.

The Commission members asked whether Mr. Morse had experience running for office, and whether his caucus had assisted him. Mr. McGrath responded that Mr. Morse had previous experience in running as a traditionally financed candidate, but not as a MCEA candidate. He went on to say that his caucus tries to educate candidates as best it can, and that educating the candidates during the 30-day period for replacement candidates in addition to taking care of all the other things candidates are responsible for is difficult. He also noted that Mr. Morse did call the Commission numerous times with various questions, and although he didn't ask a question on this particular issue the Commission didn't inform him about the exact time period.

The Commission members noted that the memo posted on the Web site indicated what the relevant dates are, and that Mr. Morse claimed in his letter that he didn't see the relevant paperwork sent to him due to his work which prevents him from being home for long periods of time.

Mr. McGrath expressed his understanding as to the difficulties with these issues, but that the idea of the MCEA is that any Maine citizen can run for office with public financing. He reiterated that Mr. Morse felt he had a full month, and that the Clean Election system should allow for some flexibility with regard to these issues.

Ms. Ginn Marvin moved, Dr. MacTaggart seconded, and the members voted unanimously (4-0) to deny Mr. Morse's appeal. The Commission members took a small recess and resumed their meeting at 10:50 a.m.

Agenda Item #8 - Appeal of Denial of Request for Certification/Kathleen M. Dougherty

The Commission staff denied Kathleen Dougherty's request to be certified as a Maine Clean Election Act candidate, because she submitted her request for certification on August 26 rather than by the August 24 deadline. She had submitted a written appeal of the staff determination.

The Commission Director explained that the facts of this case were very similar to those of the preceding agenda item: Ms. Dougherty, a replacement candidate, thought she had one full month from July 26 to request certification, when in fact she had 30 days. Ms. Dougherty indicated that she did receive the deadline material but that she didn't read it carefully.

The Commission members determined that Ms. Dougherty was not present at the meeting and the Commission had not received any communication requesting that the hearing be delayed. Ms. Ginn Marvin moved, and Dr. MacTaggart seconded, a motion denying Ms. Dougherty's appeal. The Chair, Ms. Ginn Marvin, and Dr. MacTaggart voted in favor of the motion, and Mr. Ketterer was not present in the room for the vote.

Agenda Item #10 - Request for Waiver of Seed Money Restrictions/Philip A. Curtis

The Commission members took this item out of order.

The Commission Director explained that candidates wishing to participate in the Maine Clean Election Act may accept limited seed money contributions prior to being certified as MCEA candidates, and that if the candidates fail to comply with the requirements they may request a waiver of the requirements under the Commission Rules.

Philip A. Curtis had requested certification as a Maine Clean Election Act candidate, but the Commission staff had not certified him. Mr. Curtis accepted \$500 in seed money contributions but spent \$544, including \$44 of his own funds, prior to requesting certification. Mr. Curtis explained that he didn't understand that the \$500 limit could not be exceeded and that due to some last-minute changes to his palm cards his expenditures went \$44 over the limit.

The Commission Director said that Mr. Curtis met the criteria for allowing a waiver to be granted, that the amount in question wasn't a significant amount, and that the mistake was made in good faith.

Chair Donnelly moved, Dr. MacTaggart seconded, and the members voted unanimously to grant the waiver of seed money restrictions for Mr. Curtis. Mr. Ketterer was not present in the room for the vote.

Agenda Item #9 - Request for Waiver of Seed Money Restrictions/Caspar Weinberger, Jr.

The seed money report submitted by Caspar Weinberger, Jr. indicated that he had obligated himself to some large payments to the Bangor Letter Shop which exceeded the seed money contributions he received. Under the Commission's past interpretations of

the seed money restrictions in the Maine Clean Election Act, a candidate's expenditures (actual payments to vendors) plus obligations could not exceed the seed money collected by the candidate.

The Commission Director recommended granting a waiver because six previous cases had been granted in April and May. The Commission Director felt that the Commission staff should be publicizing this requirement better.

Mr. Ketterer moved, Ms. Ginn Marvin seconded, and the members voted unanimously (4-0) to adopt the staff recommendation to grant Mr. Weinberger's request for a waiver of seed money restrictions.

Agenda Item #11 - Request for Waiver of Seed Money Restrictions/Andrea Boland

Andrea Boland is a replacement candidate who accepted \$500 in seed money contributions. She also took out a bank loan to cover her expenditures prior to her being certified. She spent \$976 of the bank loan on campaign goods and services (in addition to spending \$500 in seed money), and obligated her campaign to spend another \$1,625 on goods and services. The Commission Director explained that this appeared to violate the seed money restrictions because she spent funds other than seed money contributions, and that if the bank loan were viewed as a contribution, she exceeded the \$500 limit for House candidates and accepted more than \$100 from a single source.

Andrea Boland explained that she had several communications with the Commission staff in an effort to avoid being in violation. She explained that when it came time to file the appropriate forms she went to the Commission staff for guidance because she couldn't find the place on the forms to report the loan. She stated that she had believed that she understood the rules regarding the seed money restrictions, and thought she could take out a loan as a candidate and do whatever she needed to "bridge the gap." She explained that she thought her loan fell under the exception listed under the definition of a contribution in the Election Law.

Representative David Bowles spoke in opposition to Ms. Boland's request for certification. He expressed his opinion that he felt this case was significantly different from the previous cases heard that day. He pointed out that Ms. Boland was not a first-time candidate, and that he believed she understood that her actions were in violation of the seed money restrictions. Mr. Bowles referred to language in Ms. Boland's August 24 cover letter to the Commission and her August 31st appeal letter which he believed indicated that she understood that her bank loan was not in compliance with the rules and that she chose nevertheless to accept and spend the loan. He also expressed his view that Ms. Boland failed to meet three of the four criteria necessary to be eligible for a waiver of seed money restrictions. He stated that if the MCEA was to have any integrity, it must enforce willful and intentional violations, and that he felt this was a case where the Commission must deny Ms. Boland's request for a waiver.

Toby McGrath spoke in favor of Ms. Boland's request for certification. He stated his belief that a loan is an obligation that hasn't been paid back yet.

Ms. Boland reiterated that she spoke with the Commission on a regular basis and that she hoped that the Commission would not believe that any transgression had been intentional. The Commission Director asked that if she was aware candidates could only put in \$100 of their own money and raise a total of \$500, why did she think she could take out a bank loan that could be unlimited while other candidates were complying with the \$500 restriction on campaign spending prior to certification. Ms. Boland replied that as she understood the rules, her personal loan would not have been a violation.

The Commission Director said that he agreed with statements made earlier that participation in the MCEA should be encouraged, and that minor violations shouldn't always disqualify a candidate. In Ms. Boland's case, however, the Commission Director stated that the guidance about the seed money restrictions in the Commission's publications was sufficient and that the Commission should hold candidates to a higher standard of understanding the requirements.

Ms. Ginn Marvin moved, Mr. Ketterer seconded, and the members voted unanimously (4-0) to adopt the staff recommendation to deny Ms. Boland's request for a waiver of seed money restrictions.

Agenda Item #12 - Guidance Regarding Recounts in the 2004 General Election

At their July 21st meeting, the Commission members requested that the staff draft a memo providing guidance to general election candidates in recounts. The staff drafted a memo that presented the Commission with three options.

The Commission heard testimony from a candidate (Richard Rhames) and two attorneys (Michael Macleod-Ball and John Delahanty) who had been involved in recounts for the primary election. Mr. McLeod-Ball expressed his view that the key issue is the disparity between the traditionally financed and MCEA candidates in terms of possible options, and that a MCEA candidate has no options unless he or she can find a *pro bono* lawyer. Mr. Delahanty discussed the difficulties of a traditionally financed candidate in raising money quickly enough to deal with a recount. Richard Rhames also addressed the disparity faced by MCEA candidates involved in a recount.

The Commission members directed the staff to draft a letter to the Legislative Leaders for the Commission members' consideration at their next meeting stating that for the 2004 general election, recount expenses would not be considered campaign expenditures.

Agenda Item #13 - Request for Matching Funds Determination/Richard Rhames

The Commission Director explained that Richard Rhames was a Maine Clean Election Act candidate who was involved in a primary election recount. Mr. Macleod-Ball agreed to serve as Mr. Rhames' attorney *pro bono*. Mr. Rhames, however, requested a determination whether he was entitled to matching funds based upon legal services

received by his opponent, Alan Casavant, so that Mr. Rhames could pay Mr. Macleod-Ball for a portion of the services he provided.

The Commission Director recommended against the granting of matching funds. He said that the legal services received by Mr. Rhames' opponent appeared to fall within the volunteerism exception to the definition of expenditure, and so there was no in-kind contribution of legal services by the law firm.

Richard Rhames described the difficulties in dealing with the recount and stated that something needs to be done to ensure all MCEA candidates have a fair chance at getting elected under these circumstances.

John Delahanty spoke to the differences between the primary election recounts and the general election recounts, and stated his agreement with the staff recommendation with regards to the contribution of services to Mr. Casavant. Mr. Macleod-Ball urged the Commission to consider the fact that the donation of legal services does have value and that it can impact how a MCEA candidate can compete through the end of an election.

Arn Pearson expressed his concern that an attorney's labor, even though it is not billed, would not be considered a contribution.

Andre E. Cushing stated to the members that there is a distinction between influencing the election and deciding how the votes were cast. He expressed his concern that a large amount of money could be spent on recount situations.

Andrew Ketterer moved to adopt the staff recommendation that Mr. Rhames was not eligible for matching funds based upon an in-kind contribution of legal services to his opponent. Dr. MacTaggart seconded the motion. The members voted unanimously (4-0) in favor of the motion.

Agenda Item #14 - Possible Maine Clean Election Act Violation/Les Fossel

Les Fossel had paid approximately \$1,000 of his own funds to an attorney to draft a legal brief regarding his primary election recount. The Commission Director said that in light of the Commission members' views on Agenda Item #12, he wished to withdraw the question of whether the payment constituted a contribution to his campaign. The Commission members agreed.

Agenda Item #15 - Late Filing of 48-Hour Report by Casinos No!

The Casinos No! political action committee was one day late in submitting a 48-hour campaign finance report that was due June 7, 2004. Based on the statutory formula in the Election Law, the presumptive penalty was \$229.54. The staff recommended that the penalty be reduced by 50%, and that the Commission assess a penalty of \$114.77.

Mr. Ketterer moved, and Dr. MacTaggart seconded, to adopt the staff recommendation. Mr. Ketterer, Dr. MacTaggart, and Mr. Donnelly moved in favor of the recommendation and Ms. Ginn Marvin voted in opposition.

Agenda Item #16 - Request for Guidance from Trade Associations on Independent Expenditures

The Commission Director discussed the 2003 change in the law concerning independent expenditures. Because of this change, communications distributed in the last 21 days before an election that refer to a candidate may be presumed to be independent expenditures that will trigger matching funds – even if the communications do not expressly advocate the election or defeat of a candidate. A communication is only covered by this law if it costs more than \$100 per candidate.

David Clough and Abby Holman addressed the Commission members. Mr. Clough requested a clarification on how the law will apply to businesses. He stated that the intent of the change in the law was to address matters dealing with candidate advocacy, and that it was not intended to cover voter education. He said that a broad interpretation of the law could have a negative impact on small businesses and their efforts to promote voting. Mr. Clough pointed out that this law could also affect candidate forums sponsored by small businesses. He asked that the Commission interpret the law with respect to expenditures to encourage voter registration in a way that does not depart from the intent of the Legislature, and that the Commission also provide guidance to the public so that unforeseen negative consequences don't occur.

Ms. Holman distributed a letter regarding how voter education is treated under the federal election law. She noted that the Maine law as amended covers non-electioneering activities, and that this is not found in the federal law or in any other state. She felt that the implications of the change in the law could be significant and would have a chilling effect. She stated that the Maine definition of independent expenditures in the 21-day window is inconsistent with federal guidelines.

Timothy Belcher of the Maine State Employees Union expressed his support for the staff's various efforts to resolve this issue, and he discussed the difference between membership communications and non-membership communications.

Arn Pearson took the floor and discussed the court decision regarding the constitutionality of the Maine Clean Election Act (MCEA), which held that MCEA matching funds did not restrict free speech. He stated that the Commission should not exclude voter education because voter education cannot be truly neutral.

The Commission members took a short break, and then decided to table Agenda Item #16 until the next meeting of the Commission.

Agenda Item #17 - Section 527 Organizations

The staff presented to the Commission members a memorandum discussing the sections of the Maine Election Law which would apply to campaign finance activity of national Section 527 organizations operating in Maine.

Agenda Item #18 - Rule-Making Regarding Deadline for Reporting Independent Expenditures Greater than \$250

At the July 21st meeting, the Commission members adopted for public comment a proposed rule amendment that would shorten the reporting deadline for independent expenditures over \$250 from within 48 hours of the expenditure to within 24 hours in order to be consistent with provisions in the Election Law recently amended by the Legislature. No comments were submitted by the public regarding the proposed amendment. The Commission Director recommended that the Commission adopt the rule amendment. Mr. Ketterer moved, Ms. Ginn Marvin seconded, and the members voted unanimously to adopt the rule amendment.

Agenda Item #19 - Meeting Dates in October

The commission agreed to meet on September 29th, October 15th and October 28th at 9:00 a.m.

There being no further business, the Commission adjourned.

Dated: October ____, 2004

Respectfully submitted,

Jonathan Wayne
Executive Director